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7 RANDALL SCOTT, et al.,  
8 Plaintiffs,  
9 v.  
10 MARK WHITING,  
11 Defendant.

Case No. 21-cv-06057-PJH

**ORDER GRANTING MOTION TO  
REMAND**

Re: Dkt. No. 14

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14 Before the court is plaintiffs Randall and Shannon Scotts' motion to remand this  
15 case to the Superior Court of California. Defendant Mark Whiting filed a statement of  
16 non-opposition to the motion. The court finds that the motion is suitable for decision  
17 without oral argument and VACATES the October 7, 2021, hearing. Having read  
18 plaintiffs' papers and carefully considered their arguments and the relevant legal  
19 authority, the court GRANTS the motion for remand.

20 **BACKGROUND**

21 On June 8, 2021, plaintiffs initiated this action against defendant in San Francisco  
22 Superior Court. Dkt. 1, Ex. A. (Compl.). In their complaint, plaintiffs allege that  
23 defendant's negligent operation of a motor vehicle in San Francisco led to an accident on  
24 Lombard Street wherein plaintiff Randall Scott was seriously injured and his motorcycle  
25 was damaged. On August 5, 2021, defendant filed his answer to the complaint in San  
26 Francisco Superior Court. On the same day, defendant filed the notice of removal in this  
27 court.

28 Defendant filed his notice of removal on the basis of diversity jurisdiction under

1 Title 28 U.S.C. § 1332. Dkt. 1. Defendant represented that he was a citizen of Hawaii.  
2 Dkt. 1 at ¶ 8.

3 On August 24, 2021, plaintiffs filed the instant motion to remand, contesting that  
4 defendant is a California citizen, not a resident of Hawaii, and there is thus no diversity  
5 for purposes of jurisdiction. Dkt. 14. On September 7, 2021, defendant filed a statement  
6 of non-opposition to plaintiffs' motion to remand. Dkt. 15.

## 7 DISCUSSION

### 8 A. Legal Standard

9 A federal district court has original jurisdiction over all civil actions where the  
10 amount in controversy exceeds \$75,000 and is between citizens of different states. 28  
11 U.S.C. § 1332(a)(1) ("The district courts shall have original jurisdiction of all civil actions  
12 where the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
13 interest and costs, and is between . . . citizens of different States"). As a general matter,  
14 a defendant may remove an action to federal court if such court would have original  
15 jurisdiction over such action. 28 U.S.C. § 1441(a) ("Except as otherwise expressly  
16 provided by Act of Congress, any civil action brought in a State court of which the district  
17 courts of the United States have original jurisdiction, may be removed by the defendant  
18 or the defendants, to the district court of the United States for the district and division  
19 embracing the place where such action is pending.").

20 Title 28 U.S.C. § 1441(b)(2), however, provides that an action may not be  
21 removed solely on diversity grounds if any served defendant to such action is a citizen of  
22 the forum state. 28 U.S.C. § 1441(b)(2) ("A civil action otherwise removable solely on the  
23 basis of the jurisdiction under section 1332(a) of this title may not be removed if any of  
24 the parties in interest properly joined and served as defendants is a citizen of the State in  
25 which such action is brought."); Spencer v. U.S. Dist. Court for N. Dist. of Ca., 393 F.3d  
26 867, 870 (9th Cir. 2004) ("It is thus clear that the presence of a local defendant at the  
27 time removal is sought bars removal.") (citing Title 28 U.S.C. § 1441(b)).

1                   **B. Analysis**

2                   Here, defendant removed this action from San Francisco Superior Court in  
3 violation of Title 28 U.S.C. § 1441(b)(2), claiming to be a citizen of Hawaii. Plaintiffs,  
4 however, provide a robust record demonstrating that defendant is, in fact, a resident and  
5 citizen of California based on (1) the San Francisco address of his vehicle registration, (2)  
6 his homeowners' tax exemption for his San Francisco residence at the same address, (3)  
7 his voter registration at the same address, (4) the San Francisco headquarters of the  
8 business he founded, and (5) his continued designation as the agent for service of  
9 process for eight business entities at his San Francisco business address. Dkt. 14. The  
10 court finds that this evidence, along with a lack of any evidence demonstrating  
11 defendant's Hawaii citizenship, is sufficient circumstantial evidence of defendant's  
12 California citizenship. The defendant's statement of non-opposition to the motion to  
13 remand suggests the correctness of the court's conclusion that there is no diversity of  
14 citizenship supporting this court's subject matter jurisdiction and removal was not proper  
15 in the first instance.

16                   **CONCLUSION**

17                   For the above reasons, the court GRANTS plaintiffs' motion to remand. The court  
18 directs the clerk to remand this action to the San Francisco County Superior Court.

19                   **IT IS SO ORDERED.**

20                   Dated: September 15, 2021

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22                   */s/ Phyllis J. Hamilton*

23                   PHYLLIS J. HAMILTON  
24                   United States District Judge

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